

**NEVADA DEPARTMENT OF
CONSERVATION & NATURAL RESOURCES**

STATE ENVIRONMENTAL COMMISSION

HEARING ARCHIVES FOR

REGULATORY PETITIONS

COMMISSION PETITION NO. 98009

LEGISLATIVE COUNSEL BUREAU (LCB) FILE NO. R-125-98

DOCUMENTS INCLUDED IN THIS FILE:

YES SECRETARY OF STATE FILING FORM

YES DISCLOSURE STATEMENT PURSUANT TO NRS 233B

REGULATORY PETITIONS

ORIGINAL DRAFTED BY COMMISSION

ADOPTED BY COMMISSION

YES AS FILED AND CODIFIED BY LCB

Secretary of State
Filing Data

**For Filing Administrative
Regulations**

For Emergency
Regulations Only

Effective Date

Expiration Date

Governor's Signature

State Environmental Commission

Classification [] Proposed [] Adopted By Agency [xx] Temporary [] Emergency []

Brief description of action: **Petition 98009 (LCB File No. R-125-98)** is a permanent regulation amending NAC 444.84555 by adding language to expand the application process for a written determination for the construction and operation of a facility for the recycling of hazardous waste including: the basis for determining the economic value of a hazardous waste recycling process; requirements for public participation; and provisions for revocation, modification and appeal of administrator's decision. The amendments are necessary to provide the administrator with the relevant information and facts to properly review written determination applications and determine whether and when it is appropriate to issue, modify, suspend, revoke or deny a written determination.

Authority citation other than 233B: NRS 459.485, 459.490 and 459.500

Notice date: August 25, 1998, September 2, 1998 and September 10, 1998

Hearing date: September 24, 1998

Date of Adoption of Agency: September 24, 1998

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED
BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066
PETITION 98009 (LCB R-125-98)**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 444. This permanent regulation deals with amendments to the hazardous waste recycling regulations.

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Petition 98009 (LCB R-125-98), was noticed three (3) times: August 25, September 2 and September 10, 1998 as a permanent regulation in the Las Vegas Review Journal and the Reno Gazette-Journal newspapers. The regulation was adopted on September 24, 1998 by the State Environmental Commission. The regulatory workshops were held on August 26 and 27, 1998. The public wanted to know if used mineral oil was regulated. The Division of Environmental Protection explained that used mineral oil was regulated a hazardous waste. The workshops for this petition was held in conjunction with petition 98008 (LCB R-124-98). No written comments or testimony was received at the public hearing during adoption of the regulation. The public was also mailed the notice of intent and agenda through the Environmental Commission's mailing list. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (702) 687-4670 extension 3117, or writing to the Commission at 333 W. Nye Ln., Room 138, Carson City, Nevada 89706-0851.

2. The number persons who:

- | | | |
|------------|--|----|
| (a) | Attended each hearing; | 15 |
| (b) | Testified at each hearing: | 0 |
| (c) | Submitted to the agency written comments: | 0 |

3. A description of how comment was solicited from affected businesses, a summary of their response, and a explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses by the notices in the newspapers, as outlined in #1 and by direct mail to interested persons subscribing to the Commission's mailing list. See above statement for dates and locations of workshops and notices. Newmont Gold, at the workshop was interested in knowing whether it was necessary to adopt Land Disposal Restrictions, and the Division responded that the Commissions action would allow State to be consistent with federal regulations. No written comments were received regarding this petition, nor was testimony presented regarding this petition. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (702) 687-4670 or writing to the Commission at 333 W. Nye Ln., Room 138, Carson City, Nevada 89706-0851.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The permanent regulation was adopted by the State Environmental Commission on September 24, 1998 without a request for amendment.

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:

- (a) Both adverse and beneficial effects: and
- (b) Both immediate and long-term effects.

The amendments are not anticipated to have a significant adverse short or long term economic impact on Nevada businesses. The addition of a public notice and comment period will likely extend the application review process which may impose additional minimal costs on the hazardous waste recycler. The proposed amendments are not anticipated to have a adverse short or long term impact upon the general public. The public will receive a benefit from the information obtained during the public participation process. The amendments are intended to lessen any adverse effects that hazardous waste recycling facilities may have on the public.

6. The estimated cost to the agency for enforcement of the adopted regulation.

There will be minor additional costs to the division of environmental protection in providing notice to the public and maintaining a mailing list. These costs are expected to be covered by the application review fees already established for the purpose of reviewing the written determination.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The proposed amendments are consistent with, and in addition to, those of the federal government. The proposed amendments do not duplicate or overlap any other existing state regulations.

8. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

The Resource Conservation and Recovery Act (RCRA) Public Law 94-580 was passed by Congress in 1976. Revision of the state hazardous waste regulations is required pursuant to 40 CFR 271.4. This provision requires a U.S. EPA approved state hazardous waste program to be consistent with federal regulations. When federal hazardous waste regulations are revised, state regulations must be updated in accordance with the procedures in 40 CFR 271.21 to remain consistent.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

There will be no additional fees, nor will there be an increase in fees associated with this regulation.

END OF FILING STATEMENT FOR 98009 (LCB R-125-98)

CODIFIED PERMANENT REGULATION OF THE STATE ENVIRONMENTAL COMMISSION

LCB File No. R125-98

EXPLANATION - Matter in italics is new; matter in brackets [] is material to be omitted.

Authority: § 1, NRS 459.485, 459.490 and 459.500

Section 1. NAC 444.84555 is hereby amended to read as follows:

444.84555 1. An application for a written determination that a proposed facility or mobile unit will operate as a facility for the recycling of hazardous waste or mobile unit for the recycling of hazardous waste must be accompanied by:

(a) The name and address of the owner and operator of the facility or mobile unit.

(b) The name and address of the property owner of the location at which a facility is proposed to be constructed;

(c) A detailed description of the type of recycling which is proposed, including:

(1) The manufacturer of the equipment to be used at the facility or mobile unit;

(2) The nature of the recycling; and

(3) An explanation evidencing that the:

(I) Facility is a facility for the recycling of hazardous waste; or

(II) Mobile unit is a mobile unit for the recycling of hazardous waste [.

(b)];

(d) A description of the source and estimated amount of hazardous waste to be recycled on an average day and on a peak day [.

(c)];

(e) A physical and chemical description of the type of hazardous waste to be accepted by the facility or processed by the mobile unit [.

(d)];

(f) A detailed economic analysis of the recycling process to be used at the facility or by the mobile unit, including:

(1) The projected costs to operate the facility or mobile unit;

(2) The fees that would be charged per unit of volume to process waste transported to the facility or processed by the mobile unit; [and]

(3) The projected value that would be recovered per unit of volume [.

(e) For a facility for the recycling of hazardous waste, a] ; and

(4) The projected costs otherwise to manage, recycle, treat or dispose of the material as a hazardous waste;

(g) A description of the markets and the uses for the products to be produced and the materials and energy to be recovered [.

(f)] ; and

(h) A comparison of the economic and environmental impact of the proposed recycling process to a process which uses material that is not considered waste when producing the same product.

2. The administrator may require the applicant to submit additional information before issuing a written determination.

3. The administrator shall not issue a written determination unless he determines, based upon the application, that **[:] all of the following requirements are satisfied:**

(a) The facility or mobile unit will be operated as a facility or mobile unit for the recycling of hazardous waste. **[and the primary economic value is in the recycling of hazardous waste; and]**

(b) The recycling process has economic value. A recycling process has economic value if:

(1) The application shows that the material recovered from or the products or energy produced as a result of the process have value in the marketplace; and

(2) The fees that the applicant charges per unit of volume to process the material are less than or equal to the cost otherwise to recycle, manage, treat or dispose of the material as a hazardous waste, except that the fees that the applicant charges per unit of volume may be offset by the recovered unit value of the material recovered from or the products or energy produced as a result of the process.

(c) The probable beneficial environmental effect of the facility or mobile unit to the state outweighs the probable adverse environmental effect.

4. Before issuing a written determination for a facility, the administrator shall provide for a period of public notice and comment of not less than 45 days. The request for public comment shall be noticed in a local newspaper of general circulation that is published daily or weekly and must be sent to all persons on a mailing list developed and maintained by the administrator. A person may request to be placed on the mailing list by contacting the administrator. The administrator shall respond to all comments he receives during the period provided for comments before making his determination to issue or not to issue a written determination.

5. The administrator may revoke, suspend or modify a written determination if, at any time, he determines that:

(a) A facility or mobile unit no longer satisfies the conditions stated in the application upon which the administrator issued the written determination;

(b) An applicant misrepresented or failed to disclose fully a relevant fact on his application;

(c) The administrator receives information that was not available at the time he issued the written determination which would have justified the imposition of different conditions as the time the determination was issued; or

(d) The standards or regulations on which the administrator based the written determination have been changed.

6. A person may request a hearing before the state environmental commission concerning a final decision of the administrator to issue, deny, revoke, suspend or modify a written determination by filing a request, not more than 10 days after receiving notice from the administrator of his decision, on form 3 with the State Environmental Commission, 333 West Nye Lane, Carson City, Nevada 89706-0851. The provisions of NRS 445B.875 to 445B.899, inclusive, apply to a hearing of the state environmental commission requested pursuant to this action.

END OF LCB File No. R125-98